SUNGEI BONGKOH ESTATE SDN. BHD.

v.

PENTADBIR TANAH DAERAH KUALA MUDA

HIGH COURT MALAYA, ALOR SETAR
TUAN MOHD HISHAMUDIN BIN MOHD YUNUS JC
[ORIGINATING MOTION NO. 25-27-94]
16 DECEMBER 1994

***LAND LAW**: Acquisition of land - Award of compensation by Collector of Land Revenue - Plaintiff dissatisfied with award - Objection - Application by plaintiff for enlargement of time to file objection - Delay of 6 months - Form H not served on plaintiff - Whether failure to serve Form H substantially contributed to delay - Plaintiff's representative present at inquiry before Collector and award was made known - Whether plaintiff to show special circumstances for delay - Sections 14(1) (2), 16(1) (2), 38 (3) (4) Land Acquisition Act 1960.*

This was an application by the plaintiff for enlargement of time to file their objection to the award of compensation made by the defendant in respect of the acquisition of their land pursuant to the Land Acquisition Act 1960.

Held:

[1] The *onus* of proving special circumstances lies on the plaintiff. In order to discharge that burden, the plaintiff must show to this Court not just the fact of the failure to effect service of the Borang H (in accordance with Part VI of the Act) but must show that the failure on the part of the defendant to serve on them the Borang H substantially contributed to the delay on his part in filing his objection.

[2] In the present case, the plaintiff's representative was present at the inquiry and the award was made known to him on that day. The plaintiff company has not shown to the satisfaction of the Court how they were not able to file their objection in time because of the non-service of Borang H.

[3] The plaintiff company have not succeeded in showing any special circumstances.

[Application disallowed]

Case referred to:
Hanizan bt Che Mat & Anor v. The Collector of Land Revenue, Kota Bharu, Kelantan [1991] 1 CLJ 113 ***(dist)***

Legislation referred to:
Land Acquisition Act, 1960, ss. 8(3)(a), s. 14(1)(2), 16 (1)(2), 38(3)(a), (4)

For the plaintiff - Charles Rajah; M/s. Charles Rajah, Lim Seang Lee & Co.
For the defendant - Tuan Hassan Lah, Kedah State Legal Adviser

JUDGMENT

Mohd. Hishamudin bin Mohd Yunus JC:

The plaintiff company applies to this Court for an enlargement of time to file their objection to the award of compensation made by the defendant in respect of the acquisition of their land pursuant to the Land Acquisition Act, 1960. This application is made pursuant to s. 38(4) of the Act which reads:

> 38(4) The period of six weeks prescribed by paragraph (a) of subsection (3) and the periods of six weeks and six months prescribed by paragraph (b) of subsection (3) shall not be capable of enlargement by any Court, except in such special circumstances as the Court may think fit.

The reason given by the plaintiff is that Form H, which was required to be served on them by the defendant, was not served. Service of Form H is required by s. 16 of the Act which reads:

> 16. Service of award.
>
> (1) On making any award under subsection (1) of s. 14 in respect of any scheduled land the Collector shall prepare and serve on each person interested in such land a notice in Form H.
>
> (2) Every notice in Form H shall include an extract from the written award of the Collector in Form G, relating to the land in which the person to whom such notice is addressed has an interest.

The inquiry before the Pentadbir was held and concluded on 20 November 1993. The plaintiff's representative was present at the inquiry and the award was made known to him on that day. Section 38(3)(a) states:

> 38. (3) Every application under subsection(1) shall be made -
>
> (a) if the person making it was present or represented before the Collector at the time when the Collector made his award, within six weeks from the date of the Collector's award under s. 14.

The relevant provisions of s. 14 state:

> 14. **Award of the Collector**.
>
> (1) Upon the conclusion of the enquiry under s. 12 relating to any scheduled land the Collector shall prepare a written award under his hand in Form G, in which he shall, in respect of each separate area of scheduled land, make a separate award in respect of each person whose interest in the land has been established in such enquiry.
>
> (2) Every award prepared under subsection (1) shall be filed in the office of the Collector and shall be final and conclusive evidence of the area of any scheduled land, of its value in the opinion of the Collector, and of the apportionment of the compensation awarded by the Collector, whether the persons interested therein have or have not appeared at the enquiry.

The above provision of s. 38(3)(a) when read with s. 14 requires the plaintiff to make their objection (by written application in Form N to the Pentadbir: see s. 38(1)) within six weeks from the date of the Pentadbir's award made at the conclusion of the inquiry, that is to say, six weeks from 20 November 1993. But in the present case, the plaintiff filed their objection only on 12 July 1994. In other words there was some six months delay. By reason of the delay, the filling of the objection was rejected by the defendant.

In my view the *onus* of proving special circumstances lies on the plaintiff, and to discharge that burden, the plaintiff, in my opinion, must show to the Court not just the fact of the failure to effect service of the Borang H (in accordance with Part VI of the Act) on them; the plaintiff must also show that the failure on the part of the defendant to serve on them the Borang H substantially contributed to the delay on his part in filing his objection. To my mind, in the present case, they have not succeeded in showing any special circumstances. I fail to see how the failure to serve Borang H on the plaintiff contributed to the delay and thus constitute special circumstances. This is especially so in the present case where there was a substantial delay of about six months, and where the plaintiff's representative, after being informed of the award on the day of the conclusion of the inquiry, had not only signed Borang H (but which unfortunately was not served on him) before the Pentadbir but had also informed the Pentadbir of his intention to object (which fact was noted down by the Pentadbir on the said form). Moreover, the plaintiff is deemed to know the law and there is nothing in the Act which requires the plaintiff to wait till they were served with Borang H before filing the Borang N. The purpose of serving Borang H on the person having an interest in the land is merely to notify him of the award and to ascertain from him whether he accepts or rejects the award, and in any case where he was not present before the Collector when the award was made, also to enable him to make his objection. In the present case, however, the plaintiff's representative was present at the inquiry when the award was made known to him and the plaintiff company has not shown to the satisfaction of this Court how they were not able to file their objection in time because of the non-service of Borang H.

The learned Counsel for the plaintiff cited *Hanizan bt Che Mat & Anor v. The Collector of Land Revenue, Kota Bharu, Kelantan* [1991] 1 CLJ 113 to support his contention that a failure to serve Borang H constitute special circumstances. With respect, I do not consider the case cited as a clear authority for the proposition that mere failure to serve Borang H, by itself constitutes special circumstances. For, in that case the learned Judge made a finding of fact that service of Borang H was effected on the applicants (on 18 January 1989); and moreover, although the learned Judge allowed enlargement of time, yet the question of whether or not there was "special circumstances" for the purpose of enlargement of time was hardly discussed. However, be that as it may, if that case can be taken as an authority for such a proposition then, with due respect, I must differ with the opinion expressed therein.